

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: David Fu

Serial No. 10/662,632

Filed: September 15, 2003

Title: Display Holders for Flat Items

Attorney Docket 10448



Group Art Unit: 3611

Examiner: Brian Green

DECLARATION UNDER 37 C.F.R. §1.132

I, Bruce J. Greenbaum, hereby declare:

(1) I am President of Ultra Pro L.P., the assignee of the entire interest in the above-referenced application for patent.

(2) I am familiar with the products of Ultra Pro and with the sales of such products. Ultra Pro markets various holders for collectible cards such as sports cards, including Ultra Pro's Parts #81575 and #81721, and Parts #81139 and #81268. Parts #81139 and #81268 each is a screw-down type of holder utilizing a single threaded screw to fasten the holder's base and cover panels together when in a closed condition, while Parts #81575 and #818721 are substantially similar to Parts #81139 and #81268 except that Parts #81575 and #818721 do not include a screw but instead use a pair of embedded magnets to fasten the holder's base and cover panels together when in a closed condition. The #81575 magnetic holder (for regular cards) was introduced to the marketplace in July 2003 as an alternative to the #81139 1-screw screw-down holder (for regular cards), and the #81721 magnetic holder (for thick cards) was introduced to the marketplace in May 2004 as an alternative to the #81268 1-screw screw-down holder (for thick cards). The #81575 and #81721 magnetic holders and the #81139 and #81268 1-screw screw-down holders are shown in the attached Exhibit 1, which is a copy of page 13 of the current

Ultra Pro Hobby Catalog (the entire catalog may be accessed at Ultra Pro's website at [www.ultrapro.com](http://www.ultrapro.com)). Parts #81575 and #81721 magnetic holders together are referred to below as the Ultra Pro magnetic holder, and Parts #81139 and #81268 together are referred to below as the Ultra Pro 1-screw holder.

(3) I am familiar with the disclosure of the above-captioned patent application of David Fu, assigned to Ultra Pro. The Ultra Pro magnetic holder is substantially as shown in FIGs. 1-11 of that patent application, and the pending elected claims of that application read upon the Ultra Pro magnetic holder.

(4) Set forth below is a tabulation of Ultra Pro's sales of the Ultra Pro magnetic holder (indicated as "Magnetic" in the tabulation) and the Ultra Pro 1-screw holder (indicated as "1-Screw" in the tabulation), for each calendar quarter from the first calendar quarter of 2003 through the first calendar quarter of 2006 (it being noted that the magnetic holder for regular cards was introduced at the beginning of the third calendar quarter of 2003 and the magnetic holder for thick cards was introduced during the middle of the second quarter of 2004). The sales of the Ultra Pro magnetic holder and the Ultra Pro 1-screw holder are tabulated in both dollars and units sold. During the last calendar quarter of the tabulation, the average price of the 1-screw holder was 33 cents per unit, while the average price of the magnetic holder was 51 cents per unit.

Quarter	Sales			
	Magnetic		1-Screw	
	Dollars	Units	Dollars	Units
1Q 2003	\$0	0	\$29,973	118,600
2Q 2003	\$0	0	\$22,680	87,200
3Q 2003	\$11,472	31,800	\$25,660	98,600
4Q 2003	\$12,588	34,800	\$23,296	89,600
1Q 2004	\$9,132	24,600	\$25,864	99,427
2Q 2004	\$19,636	44,200	\$45,732	163,200
3Q 2004	\$60,636	121,600	\$43,132	154,800
4Q 2004	\$42,132	100,650	\$40,174	143,000
1Q 2005	\$64,100	142,600	\$63,116	227,400
2Q 2005	\$65,538	141,200	\$27,541	86,600
3Q 2005	\$89,470	181,600	\$38,337	117,000
4Q 2005	\$92,096	182,800	\$47,886	145,800
1Q 2006	\$132,746	262,400	\$53,923	164,800

(5) The above comparative sales tabulation is shown in graphical form in the attached Exhibits 2 and 3. Exhibit 2 shows quarterly dollar sales of the Ultra Pro magnetic holder (in black) and of the Ultra Pro 1-screw holder (in white), while Exhibit 3 shows the quarterly unit sales of the Ultra Pro magnetic holder (in black) and of the Ultra Pro 1-screw holder (in white).

(6) As may be determined from the above tabulation and Exhibits 2 and 3, during the second calendar quarter 2004 (the first calendar quarter which includes sales of both magnetic holders #81575 and #81721) magnetic holder dollar sales accounted for 43% of 1-screw holder dollar sales, or 30% of combined dollar sales (i.e., the sum of magnetic holder sales and 1-screw holder sales), while magnetic holder unit sales accounted for 27% of 1-screw holder unit sales or 21% of total unit sales. During the next seven calendar quarters (i.e., from third quarter 2004 through first quarter 2006), magnetic holder dollar sales accounted for 174% of 1-screw holder dollar sales, or 64% of combined dollar sales, while magnetic holder unit sales accounted for 109% of 1-screw

holder unit sales or 52% of combined unit sales. Less than two years after the introduction of both magnetic holders, during the first calendar quarter of 2006 (the most current calendar quarter), magnetic holder dollar sales accounted for 246% of 1-screw holder dollar sales or 71% of combined dollar sales, while magnetic holder unit sales accounted for 159% of 1-screw holder unit sales or 61% of combined unit sales. These figures indicate to us that, as between the magnetic holder and the 1-screw holder, the magnetic holder has become the card holder of choice by the purchasing public, notwithstanding that the selling price of the magnetic holder is about 1½ times the selling price of the 1-screw holder.

(7) The only difference between the magnetic card holder and the 1-screw holder is that the magnetic card holder includes a magnetic closure as claimed in the above-captioned patent application of David Fu, while the 1-screw card holder's closure includes a threaded fastener (i.e., a screw). A major advantage of the magnetic holder is that its magnets are permanently embedded in the magnetic holder's base and cover panels, and the panels are virtually self-fastening and may be unfastened without tools. In contrast, the screw of the 1-screw holder is separable from the base and cover panels and must be manipulated by a user, is subject to loss, and requires a tool (such as a screwdriver) for fastening and unfastening the panels. It is evident that Ultra Pro's higher sales of its higher priced magnetic holder in relation to and exceeding the sales of its 1-screw holder is the direct result of applicant's magnetic closure as claimed in the patent application.

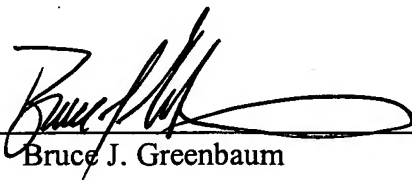
(8) Because data regarding sales by our competitors for this type of product are neither generally available nor obtainable from our competitors, we have estimated

market share based on information available to us. Our best estimate of market share, during the period prior to and at the time of Ultra Pro's introduction of the magnetic holder, is that the market for the 1-screw holder was approximately 900,000 units per year based upon Ultra Pro's unit sales during calendar year 2003 and our belief that Ultra Pro's unit sales at that time accounted for approximately 50% of the market. We believe the current combined market for the 1-screw holder and its magnetic alternative is approximately 1,700,000 units per year, of which Ultra Pro's share is approximately 75% based upon Ultra Pro's combined (magnetic and 1-screw holders) unit sales during the four calendar quarters ending 3/31/2006. During that one year period, Ultra Pro sold 768,000 magnetic holders; accordingly, during the four calendar quarters ending 3/31/2006 we estimate Ultra Pro's market share of its magnetic holder unit sales to be approximately 45% of the combined magnetic and 1-screw market. During the calendar quarter ending 3/31/2006, Ultra Pro sold 262,400 magnetic holders in a combined market of 425,000 for that quarter; accordingly, we estimate Ultra Pro's current market share of its magnetic holder unit sales to be 62% of the combined magnetic and 1-screw market.

(9) Pro-Mold, Inc. ("Pro-Mold") is a competitor of Ultra Pro in the sports card holder market, and is a prominent manufacturer of 1-screw screwdown card holders. On December 13, 2005, Pro-Mold sent an e-mail to its distributors with the subject "New Pro-Mold Products", in which Pro-Mold announced its "new magnetic trading card holder" which "has 'visually stunning' gold magnets that really set the holder apart from our competition." A copy of the e-mail announcement is attached as Exhibit 4. Shortly thereafter, on December 21, 2005, Pro-Mold issued a "News Release" on its website, with the headline "Pro-Mold Announces a Regular Card and Thicker Card Magnetic

Holder". Copies of the news release and photographs of the Pro-Mold magnetic card holders with product descriptions are set forth hereto as Exhibit 5. The Pro-Mold magnetic card holder is substantially similar to the Pro-Mold 1-screw screwdown card holder shown in Pro Mold's U.S. Patent 5,522,163 to Edward J. Neugebauer, except that the magnetic card holder provides a closure comprising a pair of magnets rather than a threaded screw arrangement. The Pro-Mold 12/21/2005 News Release and product description (Exhibit 5) admits that Pro-Mold is "certainly not the first one in the market" with a magnetic card holder, and indeed the Pro-Mold magnetic card holder utilizes the card holder magnetic closure invention disclosed and claimed in the above-captioned patent application of David Fu.

(10) I further declare that all statements made herein of my own knowledge are true and that all statements on information and believe are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that willful false statements may jeopardize the validity of the application or any patent issuing thereon.

  
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Bruce J. Greenbaum

Date: 6-19-06

# Dollar Sales

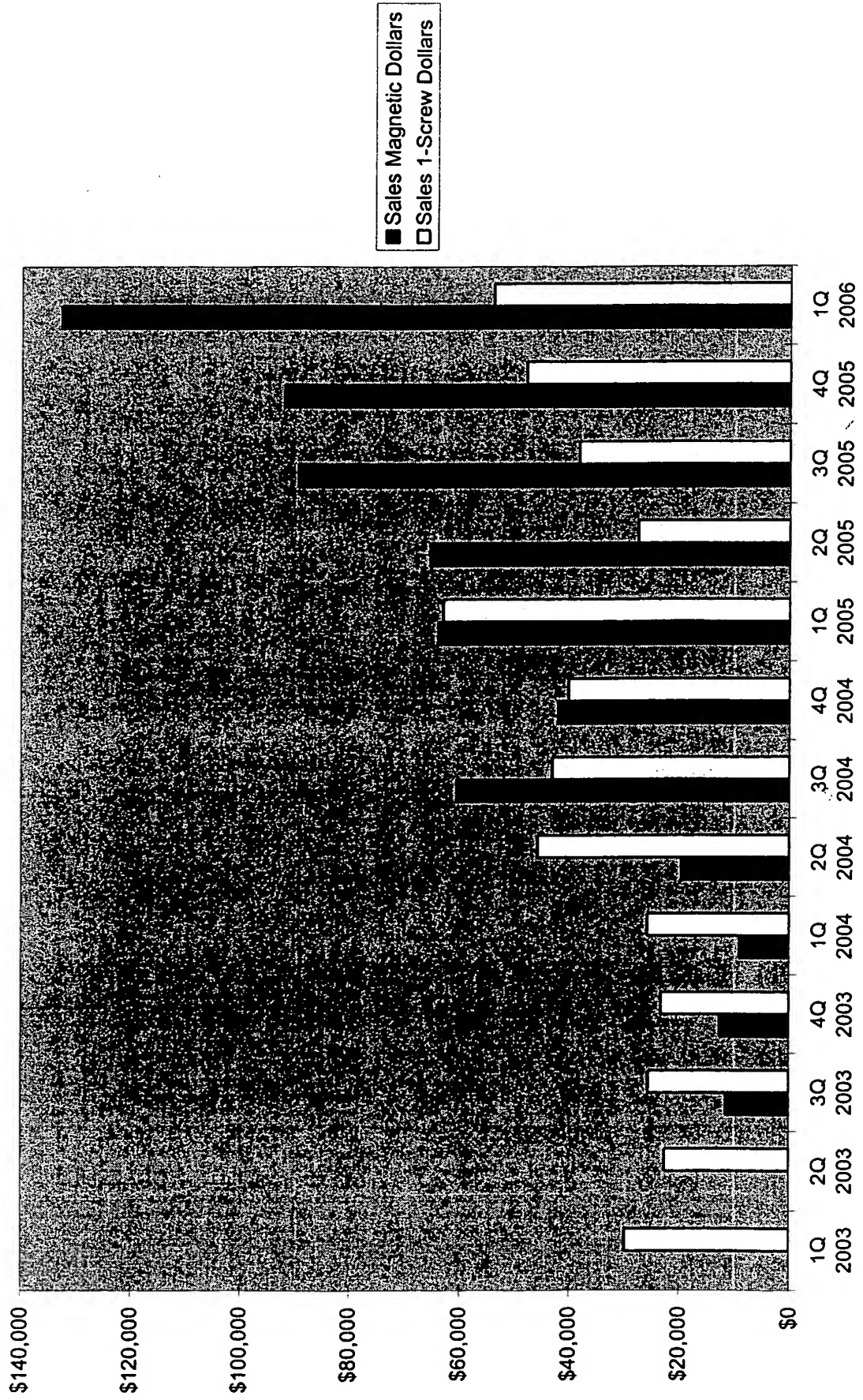


Exhibit 2

# Unit Sales

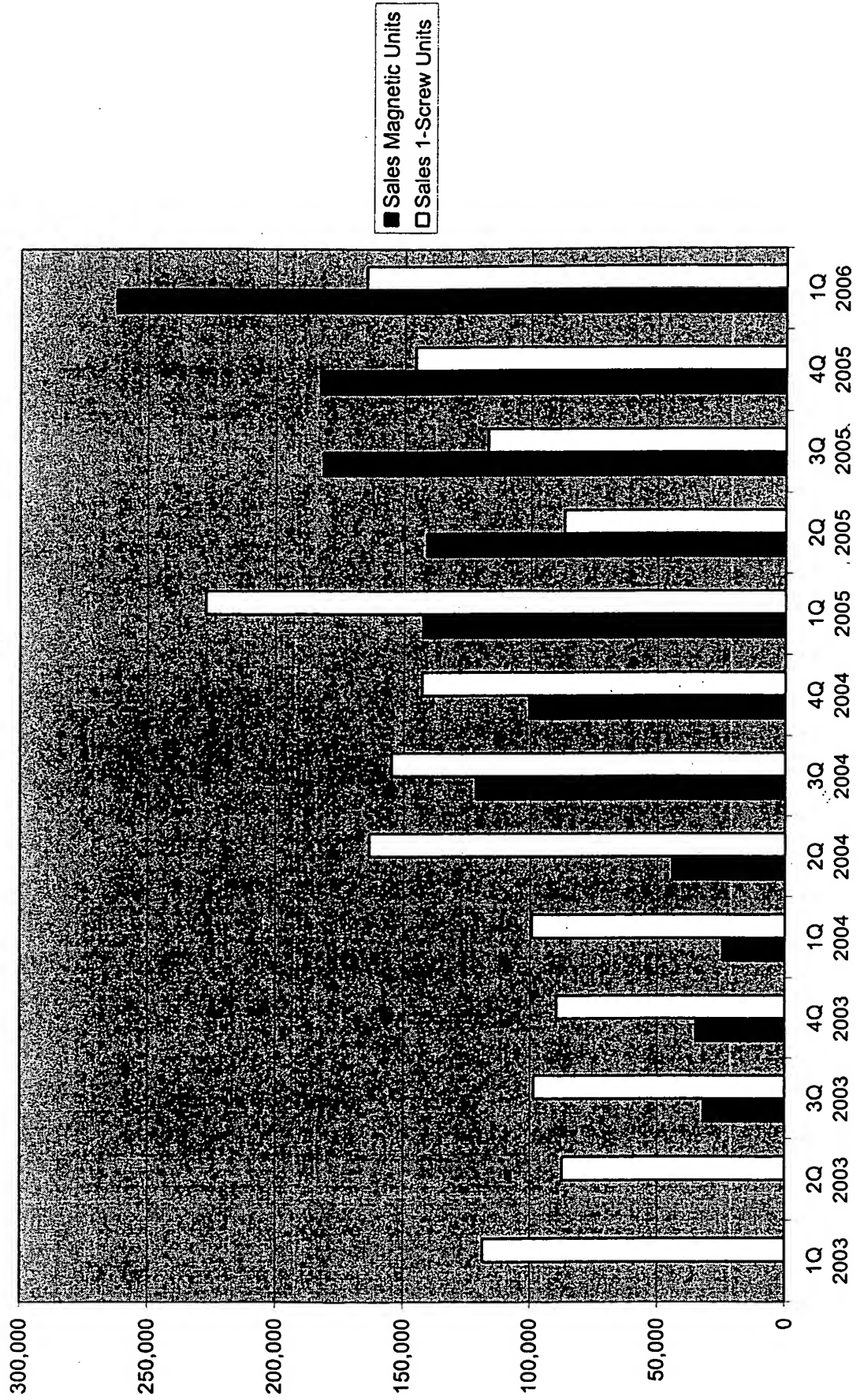


Exhibit 3



-----Original Message-----

**From:** Edward Neugebauer Jr. [mailto:ed@pro-mold.com]

**Sent:** Tuesday, December 13, 2005 12:01 PM

**Subject:** New Pro-Mold Products

We are please to announce our new magnetic trading card holder (<http://www.pro-mold.com/mh2.htm>). You should be receiving samples of this new product very soon if you haven't already by now. Our magnet holder is by far the best one in our industry given the fact that the magnets are the strongest; the holder does not fall apart very easily, and it has "visually stunning" gold magnets that really set the holder apart from our competition. The thicker card version of this holder will be available for purchase first which will be in about 1-2 weeks. We will be coming out with a regular card and real thick card version early next year. I've enclosed our updated price list and order form.

Keep in mind that we now have two holders available for the super thick Upper Deck Sweet Spot Cards. These two holders include the ½ inch thick plus one screw Screwdown (item PC17) and our two-piece snap-design 10 count regular card box (item PC10). We've also added two new products to our Econosafe line of plastic holders for your budget minded customers; a football holder and a mini-helmet holder (see the enclosed EconoSafe Price List). These two items will be available early next year. Right now we plan on discontinuing the older versions of our one screw screwdowns that don't have the arrowhead corners which include the PC5, PC6 and PC18.

I have received mixed reviews on the new packaging that we started to use earlier this year with our trading card holders. Our main goal with the new packaging was to come up with a smaller point of sale display box then the one we had previously, so that dealers could buy smaller quantities of our products at one time. Unfortunately, many dealers are not happy that the new display boxes do not stack as well as our old display box. That was the compromise going with a more economical box like the one we have versus a much more expensive corrugated one, like our old display box and what our foreign competition uses. We really had no choice but to use a thinner board for the new display box to keep our costs down, especially given the rising raw material costs we've incurred to make the products themselves. As an American Manufacture we have to make certain compromises to keep costs down on our packaging, but we will never compromise the quality of the actual products themselves. I think the smaller quantities available for purchase, the color coded display box for different thickness of trading cards that the holder will hold, and the more professional appeal of the new display boxes far outweigh the one negative.

All of our snap-design trading card holders are on special this month and next month all of our screwdown trading card holders will be on special. We will also give a 5% discount on any orders of 50,000 pieces or more. I hope you have a happy holiday and a prosperous new year!

Ed Neugebauer Jr.  
Vice-President  
Pro-Mold, Inc.  
ed@pro-mold.com  
[www.pro-mold.com](http://www.pro-mold.com)  
Phone (800)831-7303  
Fax (216)937-0366